

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's Own Motion to Consider Effectiveness and Adequacy of the Competitive Bidding Rule for Issuance of Securities and Associated Impacts of General Order 156, Debt Enhancement Features, and General Order 24-B.

Rulemaking 11-03-007  
(Filed March 10, 2011)

**OPENING COMMENTS TO THE WORKSHOP REPORT**

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**I. INTRODUCTION**

Pursuant to the oral request of Administrative Law Judge (“ALJ”) Seaneen Wilson at the January 9, 2012 workshop in the above proceeding, Pacific Gas and Electric Company (“PG&E”), Southern California Edison (“SCE”), Sempra Energy Utilities<sup>1</sup> (“SEU”), and Southwest Gas (“SWG”) (collectively, the “Joint Utilities”) hereby submit Opening Comments to the workshop report, which was filed on January 20, 2012.

**II. PROCEDURAL BACKGROUND**

On January 9, 2012, Commissioner Timothy Simon and ALJ Wilson convened a workshop to discuss the efficacy and adequacy of the Competitive Bidding Rule (“Rule”), as well as possible changes to the Rule and to General Order (“G.O.”) 24-B. During the workshop, parties described the competitive nature of current utility financing practices and clarified that contrary to the terminology, bidding under the Rule does not constitute the most competitive and cost effective means to finance debt. Commissioner Simon and representatives from Women, Minority, and Disabled Veteran Owned Business Enterprise (“WMDVBE”) financial firms

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<sup>1</sup> San Diego Gas & Electric Company (U 902 M) and Southern California Gas Company (U 904 G).

expressed satisfaction with the utilities' efforts and successes in engaging WMDVBEs in financial transactions. Parties discussed utilities' recent negotiated transactions and expressed broad support for the repeal of the Rule. Parties also discussed the flexibility that debt enhancements provide utilities to hedge risk, and discussed suggestions to update G.O. 24-B. During the workshop, Commissioner Simon acknowledged "a consensus that the competitive bidding rule is outdated."<sup>2</sup> Notwithstanding, and in lieu of repealing the Rule, Commissioner Simon stated that parties should provide proposals to "improve the current outdated competitive bidding rules with more efficient and reasonable rules while providing opportunities for diverse business enterprise firms in financial transactions."<sup>3</sup>

Accordingly, on January 20, 2012, the Joint Utilities filed a workshop report proposing to replace the outdated competitive bidding process with a principles-based Utility Long-Term Debt Financing Rule that is consistent with market standards, encompasses competition and transparency, and encourages the use of WMDVBEs. In addition, the workshop report included proposed revisions to the G.O. 24-B reporting requirements to reflect current financial reporting and cash management standards and practices. In support of the proposed Utility Long-Term Debt Financing Rule and revisions to G.O. 24-B, the Joint Utilities submit the following Opening Comments to the workshop report.

### **III. DISCUSSION**

#### **A. The Proposed Utility Long-Term Debt Financing Rule Will Benefit Utility Ratepayers and WMBVDE Firms.**

The proposed Utility Long-Term Debt Financing Rule is in the best interest of ratepayers because it will enable the utilities to access long-term cost effective capital. In contrast to the outdated and inflexible competitive bidding requirement, the Utility Long-Term Debt Financing

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<sup>2</sup> January 9, 2012 Workshop Transcript, at 3:19-20.

<sup>3</sup> *Id.* at 4:11-16.

Rule will allow the utilities more flexibility to achieve the Commission’s goals by employing market best practices. With the adoption of the Utility Long-Term Debt Financing Rule, the utilities will have more flexibility to take advantage of market conditions, time transactions, provide more information to investors, pre-market transactions, better customize structures and maturities, attract more investors, adjust pricing, and otherwise optimize competitive market opportunities with the intent of lowering costs to ratepayers.

The Joint Utilities are committed to diversity in all aspects of their business practices and proactively endeavor to utilize the services of WMBVDEs. For that reason, a provision is included in the Utility Long-Term Debt Financing Rule, which promotes utility efforts to engage WMBVDEs in financing transactions while continuing to allow utilities to exercise their discretion in structuring long-term debt financings to achieve optimal terms and pricing. To create more transparency, the Utility Long-Term Debt Financing Rule would require utilities to report on such efforts in their G.O. 156 Annual Reports. The utilities must report: 1) the number of WMBVDE firms that have been appointed as lead underwriter, co-manager, or other roles in debt securities offerings; 2) the percentage of each debt issue allocated to WMBDVE firms; and 3) the dollar amount of these debt securities issuances. Based on these reporting requirements, the Commission, as well as other parties, can assess the utilities’ progress in engaging the services of WMBVDE firms.

**B. The Proposed Utility Long-Term Debt Financing Rule Reflects Changes in Market Conditions, Financing Standards, and Regulations.**

Financial market conditions have changed considerably since the Rule was adopted by the Commission in 1946, and revised in subsequent Commission decisions.<sup>4</sup> The dynamic nature of capital markets and financial practices underscores the need for utility regulation to remain

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<sup>4</sup> The Commission amended the Rule in Decision (“D.”) 49941 (1954), D.75556 (1969), D.81908 (1973), Resolution No. F-591 (1981), and Resolution No. F-616 (1986).

responsive to market developments. The days of exclusive banking relationships are gone; financial markets have become more globalized and complex, due in large part to the broad dissemination of market information facilitated by technological advances. This, in turn, has changed the way in which companies seek and obtain financing. The Utility Long-Term Debt Financing Rule reflects today's financing environment by removing a competitive bidding requirement that is no longer consistent with how utilities (and other corporate borrowers) conduct debt financings.<sup>5</sup> Specifically, nearly all debt offerings are accomplished through negotiated bids, and the practice of competitive bidding has fallen into disuse. In fact, for the period 2008-2011, none of the over 500 debt offerings by investment grade utilities were competitively bid. Within that period (from 2008-2010), only five out of 5,663 transactions by all industries in the U.S. investment grade corporate bond market were competitively bid, which represents approximately 0.1% (both by number of deals and volume).<sup>6</sup>

Moreover, the Utility Long-Term Debt Financing Rule reflects changes in regulation, as several agencies no longer require regulated entities to competitively bid debt securities. Instead of mandating competitive bidding, the New York Department of Public Service gives utilities "flexibility in selecting the method of selling the securities."<sup>7</sup> In 1995, the Federal Energy Regulatory Commission ("FERC") amended its policies to permit public utilities to "issue

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<sup>5</sup> As a report conducted by the California Public Utilities Commission Evaluation and Compliance Division in 1986 recognized:

In response, to changing business and economic conditions, [financial] markets have become more complex and financing methods more sophisticated. Financing instruments which are in common use today did not exist 20 years ago, let alone 40 years. A number of these debt securities, either by their nature or by established business practices do not lend themselves to competitive bidding.

See California Public Utilities Commission Evaluation and Compliance Division, *Report on the California Public Utilities Commission's Bidding Rule for Issuance of Debt Securities*, at p. 5 (September 5, 1986).

<sup>6</sup> See J.P. Morgan, "Competitively Bid Transactions 2008-2010" (April 15, 2011).

<sup>7</sup> 1984 N.Y. PUC LEXIS 227 \* 8 (May 18, 1984). See also 1985 N.Y. PUC LEXIS 784 \* 9 (January 14, 1985) ("Considering Niagara Mohawk's current financial posture, the company should be given flexibility in selecting the method of selling the securities.")

securities by either a competitive bid or negotiated placement,”<sup>8</sup> reasoning that “the proposed changes would simplify the placement procedure, streamline the regulatory process and facilitate timely financing.”<sup>9</sup> Likewise, in 1994, the Securities and Exchange Commission (“SEC”) rescinded Rule U-50, which required registered holding companies and their subsidiaries to use competitive bidding in the issuance or sale of securities. The SEC found “that the rule is no longer necessary in view of the extensive reporting requirements imposed by the Public Utility Holding Company Act and other federal securities laws.”<sup>10</sup> In addition, the Interstate Commerce Commission (“ICC”), in 1985, repealed its competitive bidding requirement, finding that “the need for our oversight of railroad securities has decreased as a result of changed circumstances and recent Congressional action.”<sup>11</sup> The ICC determined that rescission of the competitive bidding requirement was warranted in order to promote the Congressional policies to increase the attractiveness of investing in railroads, and in light of the fact that many of the government regulations affecting railroads had become unnecessary and inefficient.<sup>12</sup>

**C. The Proposed Revisions to the G.O. 24-B Reporting Requirements Are Consistent with Current Financial Reporting and Cash Management Standards and Practices.**

In the workshop report, the Joint Utilities proposed to revise G.O. 24-B to allow utilities to file their G.O. 24-B reports on or before the 60<sup>th</sup> day following each quarter. This extension of time is necessary to allow the utilities to coordinate the filing of their G.O. 24-B reports with

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<sup>8</sup> Streamlining of Regulations Pertaining to Parts II & III of Federal Power Act & Public Utility Regulatory Policies Act of 1978, 60 Fed. Reg. 4853, 4834 (1995) (to be codified at 18 C.F.R. pt. 34.)

<sup>9</sup> *Notice of Proposed Rulemaking Re Streamlining of Regulations Pertaining to Parts II & III of Federal Power Act & Public Utility Regulatory Policies Act of 1978*, 61 F.E.R.C. ¶ 61, 243, at p. 6 (1992).

<sup>10</sup> Public Utility Holding Company Act Rules, SEC Release No. 35-26031, 1994 SEC LEXIS 1176 at \*20 (April 20, 1994).

<sup>11</sup> *Exemption of Railroads from Securities Regulation under 49 U.S.C 11301*, 1985 ICC LEXIS 492, at \*2 (April 1, 1985). The ICC determined that rescission of the competitive bidding requirement was warranted in order to promote the Congressional policies to increase the attractiveness of investing in railroads, and in light of the fact that many of the government regulations affecting railroads had become unnecessary and inefficient.

<sup>12</sup> *Id.*

their SEC disclosure filings, and provide the Commission with the most current, publicly available information. The workshop report also updates language in G.O. 24-B, which is necessary to reflect current market terms, practices, and standards. Finally, the workshop report replaces the requirement for separate bank accounts and related reporting with the requirement that utilities must “maintain records and accounts consistent with current accounting and internal control standards in a manner that demonstrates the appropriate use of funds in compliance with Section 817 of the Public Utilities Code and any related financing authority.” This revision to G.O. 24-B was added because treasury systems are sufficiently advanced such that funds can be properly classified in utilities’ financial reporting systems without requiring that the funds be maintained in separate bank accounts. The maintenance of separate bank accounts is administratively burdensome and unnecessary because there are alternative means to ensure that funds are being used for their intended purpose. In addition, the maintenance of separate bank accounts is an inefficient use of corporate cash, which can increase costs for ratepayers.

#### **IV. CONCLUSION**

For the reasons discussed herein, the Joint Utilities respectfully request that the Commission adopt the proposed Utility Long-Term Debt Financing Rule and revisions to G.O. 24-B.

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Respectfully submitted on behalf of utilities below  
pursuant to Rule 1.8(d),

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